Supreme Court, U.S.
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No. 91-1886

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

JOHN F. FREAS

Petitioner,

versus

STATE OF NEW JERSEY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE NEW JERSEY SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the trial court erred by forcing petitioner to trial without benefit of counsel.

2. Whether the denial of discovery, which was based on petitioner's lack of counsel, denied him relevant evidence which was crucial to his defense.

3. Whether willfulness, as an integral part of the element of intent, should have been addressed during jury instructions.

4. Whether the New Jersey Gross Income Tax Act lacks the force of law for vagueness, ambiguity, and lack of definitive terms.

5. Whether the trial court had jurisdiction to try petitioner as a resident taxpayer as

defined in the New Jersey Gross Income Tax Act.

6. Whether the New Jersey Gross Income Tax Act lacked force of law prior to 1989 for lack of a published organizational structure for the New Jersey Department of Taxation.

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No.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

JOHN F. FREAS

Petitioner,

v.

STATE OF NEW JERSEY,

Respondent.

On a Writ of Certiorari from the

New Jersey Supreme Court

PETITION FOR CERTIORARI

The petitioner herein respectfully prays that a writ of certiorari issue to review the New Jersey Superior Court Appellate Division denial of appeal from the judgement in the criminal action heard in the New Jersey Superior Court. Petition for certification by the New Jersey Supreme Court was denied February 19, 1992.

OPINIONS BELOW

The guilty verdict of the New Jersey Superior Court in State of New Jersey v. John F. Freas was handed down on February 15, 1990. The appeal made to the New Jersey Superior Court Appellate Division was denied on December 6, 1991 in an unpublished

decision which is reproduced in Appendix A. A petition for certification was denied by the New Jersey Supreme Court which is reproduced in appendix B.

JURISDICTION

The decision by the New Jersey Supreme Court to deny the petition for certification was entered on February 19, 1992. This petition was timely filed within 90 days of the date of the New Jersey Supreme Court's entry of the order denying discretionary review.

The New Jersey Supreme Court, as the state court of last resort and in its order denying discretionary review, has let stand important questions of federal law which conflict with the decisions of, and should be settled by, the United States Supreme Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Article V. Section IV. para. 6 of the New Jersey Constitution provides that "(N)o rule or regulation made by any department of ... this state ... shall take effect until it is filed ..... as may be provided by law."

2. The New Jersey Administrative Procedures Act (NJSA 52:14B-3(1)) requires that the New Jersey Division of Taxation publish its organizational structure in the New Jersey Register in order to implement a delegation of authority structure as required by that Act.

3. Section 54A:1-2(m) of the New Jersey Gross Income Tax Act defines a "resident taxpayer as "...an individual:

> 1. Who is domiciled in this State, unless he maintains no permanent place of abode in this State, maintains a

permanent place of abode elsewhere, and spends in the aggregate no more than 30 days of the taxable year in this State, or;

2. Who is not domiciled in this State but maintains a permanent place of abode in this State and spends in the aggregate more than 183 days of the taxable year in this State, unless such individual is in the Armed Forces of the United States."

4. Article 6 (Ammendments to the U.S. Constitution) and Article 1, paragraph 10 of the New Jersey Constitution guarantee the petitioner his right to assistance of counsel, to be informed of the nature and cause of the accusation against him, to an impartial jury, and to have compulsory process for obtaining witnesses in his favor.

STATEMENT OF THE CASE

A. Course of Proceedings in the Case before the Court.

This case arose upon the arrest, trial, criminal prosecution and subsequent conviction of the petitioner in the New Jersey Superior Court for for failing to file State of New Jersey Gross Income Tax - Resident Returns.

The petitioner appealed the conviction to the New Jersey Superior Court Appellate Division which upheld the lower court proceedings for the most part while finding against the severity of the sentence.

A Petition For a Writ of Certification was filed with the New Jersey Supreme Court and was subsequently denied by that court.

B. Relevant facts concerning questions presented.

John F. Freas (Freas) was born and has maintained his domicile in the State of New Jersey for all of his life. He is not, and never has been, a resident of the State of New Jersey as that term is defined (Black's Law Dictionary, 5th edition).

On or about March 28, 1989, a Criminal Summons was issued pursuant to a State of New Jersey Grand Jury indictment against Freas for failing to make, render, sign, and certify a State of New Jersey Gross Income Tax - Resident Return for calendar years 1984, 1985, 1986, and 1987.

On February 15, 1990, Freas was found guilty on all four counts of the indictment.

On May 4, 1990, the court imposed a sentence of 5 years imprisonment, 5 years probation, and fines totaling $6500.00.

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Freas appealed the findings of the trial court to the Appellate Division of the New Jersey Superior Court.

The Appeals Court ruled against all arguments in the appeal except that which dealt with the severity of the custodial portion of the sentence (Appellate division Case # A-4692-89T1).

The defendant petitioned the New Jersey Supreme court for certification of the judgement in A-4692-89T1 which was denied February 19, 1992.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted because this Petition presents several issues previously addressed by this Court which were raised in argument by the petitioner and were subsequently ruled against by the Trial Court, the New Jersey Superior Court

Appellate Division, and denied review by the New Jersey Supreme Court. These rulings conflict with prior decisions of both the New Jersey Supreme Court, and the United States Supreme Court.

A. In this case, the Trial Court denied Freas his fundamental right to due process by forcing him to trial without the assistance of counsel and, because of this lack of counsel, denied him discovery evidence necessary for his defense. In the absence of counsel, Freas was unable to adequately raise the arguments that could have explained his theory of the case (even if his position was later judged to be erroneous) thereby negating the elements of willfulness or intent. Under these circumstances, this case presents important questions concerning the obligation and responsibility of the Trial Court which

forced Freas to trial without benefit of counsel.

1. In Gideon v. Wainwright, 372 U.S. 335 this Court said:

> "The right to counsel at a criminal trial is deemed so fundamental to the interests of justice that denial thereof automatically vitiates any conviction obtained. This is true even though there is no showing of any prejudice or unfairness in the proceedings or even any need for having counsel."

Freas was not advised of the pitfalls he might encounter by acting as his own attorney nor did he ever knowingly, intelligently or unequivocally waive his right to assisitance of counsel. Since Freas was unable to secure competent counsel to act as an advocate in his behalf and, absent an explicit waiver of his right to counsel, the trial court should have assigned "backup" counsel; United States

v. Gallop, 838 F2d 105, 107 (4th cir. 1988) as cited in State v. Kordower, 229 N. J. Super. 566. No direct inquiry was made to indicate that Freas was made aware of the "possible defenses to the charges against him and the circumstances in mitigation thereof", Kordower supra at 557. The Trial Court's procedure generally failed to comply with the Appellate Court's later ruling in State v. Slattery, 239 N.J. Super. 534 (App. Div. 1990) by failing to assign standby counsel, a procedure long recognized by that Court's case law.

2. It is elemental that the liberal treatment of the rules for discovery should certainly be applied when the litigant is proceeding without benefit of counsel. The courts have found that discovery procedures should be liberally construed to compel production of all relevant information which

may lead to the discovery of relevant evidence; Franklin v. Milner, 375 A.2d 1244, 150 N.J.Super. 456; Gureghian v. Hackensack Hospital, 262 A.2d 440, 109 N.J.Super. 143; Van Langen v. Chadwick, 414 A.2d 618, 173 N.J.Super. 517; Finnegan v. Coll, 157 A.2d 737, 59 N.J.Super. 353. Freas has reason to believe that the facts needed to overcome the State's prosecution are apparently in the sole possession of the New Jersey Department of Taxation.

3. The Trial Court instructed the jury not to consider Freas' intent. Intent and wilfulness must be considered in conjunction with each other. If Freas did not believe that he was one who was subject to the New Jersey Gross Income Tax Act then he had no intent to violate the statute. This Court has consistently held that criminal tax offenses are specific intent crimes and that

a defendant does not become a criminal by his mere failure to measure up to some prescribed standard of conduct. And because of the complexity of the income tax laws, the mistake of law defense has long been recognized as having particular vitality. In U.S. v. Murdock, 290 U.S. 389, the Court held that the defendant had a right to have the question of the absence or presence of evil motive (intent) submitted to the jury.

Assuming arguendo that petitioner's legal arguments are in error, the trial court erred by not permitting petitioner's instructions regarding willfulness. No evidence was introduced by the prosecution to show "willfulness" on the part of the defendant and the Trial Court did not allow the jury to consider the effect of willfulness when it denied Freas one of his jury instructions. This Supreme Court of the United States most recently condemned this

procedure in Cheek v. U.S., to wit:

"Characterizing a belief as objectively unreasonable transforms what is normally a factual inquiry into a legal one, thus preventing a jury from considering it. And forbidding a jury to consider evidence that might negate willfulness would raise a serious question under the Sixth Amendment's jury trial provision, which this interpretation of the statute avoids. Of course, in deciding whether to credit Cheek's claim, the jury is free to consider any admissable evidence showing that he had knowledge of his legal duties". Cheek v. United States, Supreme Court of the U.S., Case No. 89-658, Decided January 8, 1991.

An individual's state of mind should be considered when determining criminal intent which includes some measure of guilty knowledge and willfulness. The Trial Court, in its charge to the jury, made mention of

the fact that, as to the element of intent, a person's act must be done with the knowledge of consequences and that he was willing and electing to do it. The Tax Court of New Jersey, in Goffredo v. Tax Div. Dir., 9 N.J. Tax 135, allowed that the imposition of penalties is not warranted where taxpayers firmly and genuinely believed that they were not New Jersey residents for New Jersey income tax purposes. Petitioner believes that he is not a resident taxpayer for New Jersey income tax purposes and has never demonstrated a willfulness to defraud the State of New Jersey out of property to which it is legally entitled.

B. The New Jersey Gross Income Tax Act lacks the fundamental tenet of due process in that it is vague, ambiguous, and lacks definitive terms. The petitioner, to the

best of his understanding, does not fit the definition of "resident taxpayer" as described in the Act and that the Act lacked force of law prior to 1989 in that the New Jersey Division of Taxation failed to have its organizational structure published in the New Jersey Register pursuant to the New Jersey Constitution and the New Jersey Administrative Procedures Act.

1. The grade level of education required to read and understand N.J.S.A. 54A:2-1 is 31 years, 11 years greater than a Ph.d. as determined by the Flesch-Kincaid Std. of education grade level for understanding [1]. The words of construction

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[1]Defendant relies on common sense and two computerized programs designed exclusively with the Flesch-Kincaid Standard. They are Right Soft Inc. and the one used for valuation herein is Reference Software Inc. Grammatik III Version 1.02. The Flesch-Kincaid Readabilility Index was developed by the Department of Defense and is

in N.J.S.A. 54A:8-3.1, Persons Required To File, require a 22 year level of education to read and understand. The terms "person" and "individual" are not properly defined within the statute. Freas, who is a high school graduate and a carpenter by trade has determined to the best of his ability that he is not subject to this particular law in that the terms and definitions of the New Jersey Gross Income Tax Act do not pertain to him. The Trial Court made no effort to clear up any misunderstanding that Freas may have been laboring under and insisted that the Act was

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used by many federal agencies including the Internal Revenue Service. The Flesch-Kincaid Index is calculated using the formulas in Military Specification MIL-M-3878B. Insurance Companies use this index in its appraisals of readability of their policies. The Gunning Fog Index uses Grade Levels as does the Flesch-Kincaid Index. The Gunning Fog Index determines the educational reading grade level needed to understand the text. The formula used to compute this index is found in "Gunning's Technique of Clear Writing" by Robert Gunning.

a law that "everybody knows". This Court has held that it "...is a fundamental tenet of due process that no one may be subject to peril of life, liberty, or property as to [guess] the meaning of penal statutes." Lanzetta v. New Jersey, 306 U.S.451, 453 (1939) and explained further that a criminal statute is "...invalid if it fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden." U.S. v. Harris, 347 U.S. 612, 617. This Court also stated that, in interpreting a tax statute, the court must not extend its provisions beyond the clear import of the language employed. Such a statute, in case of doubt as to its scope, "...should be construed most strongly in favor of the citizens and against the state." Gould v. Gould, 245 U.S.151.

2. The Trial Court failed to establish

jurisdiction in trying Freas as a "resident taxpayer" when it failed to address the definition of the term as it appears in N.J.S.A. 54A:1-2(m). In order for Freas to be a resident taxpayer required to file a resident return, the legislature, in its creation of the instrument at N.J.S.A. 54A: 8-3.1, was required to prescribe the forms for use by the public which the public would be required to maintain and provide to the Director of Division of Taxation. There were no regulations defining the scope and content of resident or non- resident income tax return forms (implementing rules) or instruction manuals published in the New Jersey Register ("NJR") nor were there any evidenced within the New Jersey Administrative Code ("NJAC"). Before a statute can have full force of law, implementing rules and regulations must be published in the NJR and NJAC as mandated by

the N.J. Constitution and the New Jersey Administrative Procedure Act ("NJAPA"), N.J.S.A. 52:14B-4 (a)(1), (2). Since the NJR is devoid of the publication of any regulation, form or instruction manual relevant to N.J.S.A. 54A: 8-3.1 the colorable law terms are vague and ambiguous and would therefore as a matter of necessitay invalidate the instrument because the lack of publication denies those who are subject to its laws, their right to administrative due process.

3. Prior to 1989, The New Jersey Gross Income Tax Act (Title 54A NJSA) lacked force of law because, not until the New Jersey Department of Taxation published its 1989 annual report, did its Director create an organizational structure. Prior to its annual report of 1989, the New Jersey Department of Taxation failed to establish

its organizational structure in violation of N.J. Constitution Article V, Section IV, para. 6 and thus failed to implement a delegation of authority structure as required by the New Jersey Administrative Procedures Act (NJAPA) at N.J.S.A 52:14B-3(1) thereby rendering the law unenforceable against any taxpayer.

CONCLUSION

For all of the foregoing, certiorari should be granted here to explicitly rule on these fundamental issues of due process that have previously been before this Court.

Dated: May 18, 1992

Respectfully submitted,

John F. Freas, Pro Se

APPENDIX

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NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-4692-89T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JOHN F. FREAS,

Defendant-Appellant.

Submitted November 25, 1991
Decided Dec. 6, 1991

Before Judges Bilder and Keefe

On appeal from the Superior Court of New Jersey, Law Division, Mercer County.

John F. Freas, appellant, filed a pro se brief.

Robert J. Del Tufo, Attorney General, attorney for respondent (Arthur S. Safir, Deputy Attorney General, of counsel and on the letter brief).

PER CURIAM

Following indictment and a jury trial, defendant John Freas was convicted of failure

to file New Jersey Gross Income Tax Resident Returns for the calendar years 1984, 1985 and 1986, N.J.S.A. 54A:9-15(a), (Counts 1, 2 and 3), and failure to file such a return for the year 1987, N.J.S.A. 54A:52-8, (count 4). He was fined $1,000 with respect to 1984 (count 1); fined $1,500 with respect to 1985 (count 2); sentenced to a five year probationary term conditioned upon his continuing to file state income tax returns on a yearly basis, and fined $2,000 with respect to 1986 (count 3); and sentenced to a custodial term of 5 years and fined $2,500 with respect to 1987 (count 4).[1] Defendant was also ordered to pay VCCB penalties with respect to each conviction.

In his pro se brief defendant makes the

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[1]The fines imposed in court are not properly reflected in the judgement of conviction. The sentence stated in court controls. See State v. Pohlabel, 40 N.J.Super. 416, 423 (App. Div. 1956)

following contentions:

I. DEFENDANT WAS DENIED RIGHT TO ASSISTANCE OF COUNSEL AS GUARANTEED UNDER THE STANDARDS SET FORTH IN ARTICLE 1, PARA. 10 OF THE N.J. CONSTITUTION AND THE 6TH AMENDMENT TO THE CONSTITUTION FOR THE UNITED STATES OF AMERICA.

II. DEFENDANT WAS DENIED DISCOVERY.

III. THE LOWER COURT WAS NOT GRANTED STATUTORY JURISDICTION TO HEAR THE CASE AS A CRIMINAL MATTER.

IV. BECAUSE THERE HAS BEEN NO JUDICIAL DETERMINATION IN THE NEW JERSEY COURTS AS TO WHAT CONSTITUTES THE FILING OF A NEW JERSEY GROSS INCOME TAX RETURN, THE LOWER COURT ERRED WHEN IT REFUSED TO ACCEPT DEFENDANT'S MAY 15, 1989 FILINGS AS RETURNS WHEN IT DETERMINED THAT THE STATE FURNISHED FORMS FILED BY THE DEFENDANT ON MAY 4, 1990 WERE NOT SATISFACTORY RETURNS.

V. THE DEFENDANT WAS DENIED DUE PROCESS BY BEING DENIED PROPER JURY INSTRUCTIONS AND BY BEING DENIED HIS RIGHT TO DISCOVERY.

VI. THE SENTENCE IMPOSED WAS EXCESSIVE AND UNDULY HARSH AND DOES NOT CONFORM TO THE GUIDELINES OF N.J.S.A. 2C;44-1e.

As with this appeal, defendant

represented himself before the trial court. He contends the pro se representation deprived him of his constitutional right to the assistance of counsel.

The record discloses that between his first appearance on April 10, 1989 and the commencement of trial on February 13, 1990 defendant appeared 20 times. On each occasion he was without counsel; almost every time, considerable colloquy took place with respect to the need and advisability of such assistance. The record paints a clear picture of an extremely patient judge trying to deal with a defendant who in words expressed a desire for, in fact demanded, counsel, while in deed he was refusing to obtain such assistance. Initially, the trial judge's admonitions led defendant to seek an attorney. But as defendant reported at subsequent hearings, upon hearing the facts, the attorneys expressed a desire to plea

bargain and rejected defendant's notions that he could not be taxed and that the court lacked jurisdiction to try him.[2] For example, on May 12, 1989 he advised the court:

> I talked to an attorney and he -- no, I am not represented. We had a disagreement and he doesn't want to pursue it. He doesn't

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[2] Defendant's theory is expressed in his brief in the following manner:

> When defendant found that the legislature could only regulate the regulated public (artificial entities, privileged individuals and corporations), the defendant came to the realization that he was a Citizen and not a member of the regulated public (resident taxpayer) required to pay kick-backs (returns) to the State for doing business (which defendant was not doing) within the boundaries of New Jersey State. That is, he determined that the N.J. Income taxing statutes did not apply to him and if the State attempted to force the statutes and their regulations upon him, he believed that the courts would find that they did not apply to him.

At a May 12, 1989 hearing he advised the Court:

> The charges against me apply to a resident of the State of New Jersey and I am a citizen of the State of New Jersey.

want to fight the case. He wants to make a deal and I don't think you have jurisdiction over me in this matter and I would like to know the nature of the charges against me.

And on June 9, 1989 he advised the court:

> Everybody wants to come in and make a deal, and they tell me as far as they are concerned, it's whether you did or didn't file. It's not whether you are a citizen, whether you have any rights.

As defendant made clear again and again, he wanted, he insisted, on representation, but it must be adequate, competent representation, a judgement which was for him alone. Because he was not indigent, defendant was not eligible for representation at public expense. Moreover, as he advised the court on May 17, 1989: "I don't think I would get adequate, competent representation by someone that was forced to take my case." On October 6, 1989 he advised the court:

> I, John F. Freas, appearing especially, and not generally, under threat of the loss of my liberty, and without assistance of meaningful and competent counsel, do hereby demand that you [the trial judge] appoint me assistance of

meaningful and competent counsel.

From these few examples, it can be seen that defendant's actions made any representation impossible. He clung to a legal theory which every attorney rejected and refused the assistance of anyone who would not act strictly in accordance with his views. We are staisfied that defendant's intransigence, displayed over a period of almost 10 months, cannot be permitted to frustrate his prosecution for failure to obey our income tax laws.

The record shows that on numerous occasions the trial judge, in addition to his constant efforts to have defendant obtain representation, explained to defendant the charges against him and the consequences of a guilty verdict. Moreover the record reflects, in defendant's colloquy with the court, the large number of conferences he had with attorneys who apparently found the terms

he attached to their representation unacceptable. It can be reasonably inferred that they also advised him of the nature of his problem and of the potential consequences. We are satisfied that measured by any objective standards, defendant by his conduct, "knowingly and intelligently" waived his right to counsel. As we noted in State v. Slattery, 239 N.J.Super. 534, 542 (App. Div. 1990), a defendant cannot be permitted to play "cat and mouse" nor to obstruct the court process and deprive the court of jurisdiction to try the matter. The record shows that defendant received a fair trial in which he presented his unorthodox views and was convicted after the presentation of properly admitted evidence which, when accepted by the jury, proved his guilt beyond a reasonable doubt.

Defendant's remaining contentions are clearly without merit. R. 2:11-3(e)(2). The

trial judge's January 5, 1990 finding that "all discovery that is relevant or germane to, or which Mr. Freas is entitled to, has been provided to him" is fully supported by the record. See State v. Johnson, 42 N.J. 146, 162 (1964). The court's jurisdiction is unarguable. N.J. Constitution of 1947, Art. VI, Sec.3, Para. 2. The charge was unexceptionable. As the judge properly charged the jury, in order to obtain convictions the State was required to prove four elements beyond a reasonable doubt: (1) that defendant was a resident of this State, (2) that he had gross income in excess of $3,000, (3) that he failed to file New Jersey Gross Income Tax returns, (4) that he intended thereby to evade the income tax filing requirement.[3] The first three

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[3]N.J.S.A. 54A:9-15(a) in relevant part provides:

Any individual ... who, with

elements were clearly proved by the records of his employers, the W-2 forms and the records of the State's Division of Taxation, Processing Branch, which showed tax returns from defendant for the years 1980 through 1983 but no returns for the years in

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intent to evade any tax or any requirement of this act or any lawful requirement of the director thereunder, shall fail to pay the tax, or to make, render, sign or certify any return or declaration of estimated income, or to supply any information within the time required by or under the provisions of this act ... shall be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed $5,000.00 or be imprisoned not to exceed 1 year, or both, at the discretion of the court.

N.J.S.A. 54:52-8 provides:

A person is guilty of a crime of the third degree if he fails to file any return or report required to be filed pursuant to the provisions of any State tax law with the intent to defraud the State or to evade, avoid or otherwise not make timely payment of any tax, fee, penalty, interest or any part thereof which shall be due pursuant to the provisions of the State Tax Uniform Procedure Law, R.S. 54:48-1 et seq., as amended and supplemented, or any State tax law.

question, 1984 through 1987. Defendant's contention at trial as to the admissibility of this evidence was clearly without merit. See R. 2:11-3(e)(2); also Evid. R. 63(13),(14). A conclusion as to defendant's intent was a matter of inference from the circumstantial evidence. As the judge properly charged the jury, intent is not normally demonstrated by direct evidence of a person's thoughts but must be found from their actions and the surrounding circumstances. Here, defendant's past history of filing NJ-1040s, his attempts to avoid filing proper Form W-4s, his claim of exempt witholding status and his failure to file NJ-1040s for the years 1984, 1985, 1986 and 1987, in each of which his income exceeded $3000[4], permits an inference that

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[4] His income was approximately $66,000 in 1984, $58,000 in 1985, $6,200 in 1986 and $42,800 in 1987,

his failure to file the income tax returns was with the intention of evading the tax. If accepted by the jury, the evidence clearly permitted findings of guilt beyond a reasonable doubt for each of the four years.

Defendant's remaining contentions as to his convictions are similarly without merit. R. 2:11-3(e)(2). The trial judge's finding that the documents delivered by defendant on sentence day did not meet the standards required by way of the information supplied is fully supported by the record. See State v. Johnson, supra. Finally, we entertain no doubt as to the propriety of the fines and probation imposed. See State v. O'Donnell, 117 N.J. 210, 215 (1989); State v. Roth, 95 N.J. 334, 365-366 (1984). The imposition of the custodial term, however, does not reflect an appropriate balancing of the statutory aggravating and mitigating factors. While we appreciate the need for a sentence which will

deter tax evasion, it would seem that this necessary end could be readily accomplished by the heavy fines, the clearly appropriate probation and a lesser custodial sentence which would reflect the gravity of the defendant's conduct while taking into account his otherwise crime-free life.

The conviction and the noncustodial portion of the sentence are affirmed. The matter is remanded for resentencing as to the custodial portion of the sentence.

SUPREME COURT OF NEW JERSEY
C-592 September Term 1991
34,614

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JOHN FREAS,

Defendant-Petitioner.

To the Appellate Division, Superior Court:

A petition for certification of the judgement in A-4692-89T1 having been submitted to this Court, and the Court Having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 18th day of February, 1992.

(signed)
CLERK OF THE SUPREME COURT